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State v. Graves

State v. Graves, Opinion No. 21892,
Filed March 31, 1983.

Often seemingly unimportant technicalities end up causing trouble later on in law enforcement. The South Carolina Supreme Court helped end problems in such an area in State v. Graves, Opinion No. 21892, filed March 31, 1983. This case deals in part with the correct breathalyzer to be used in administering the breath examination in a DUI case. The statute which sets up a chemical test of the breath for those persons charged with driving under the influence of alcohol (Section 56-5-2950(a), S.C. Code of Laws 1976 as amended) also requires the State Law Enforcement Division to promulgate the rules necessary for this test. The rules include determining the kind of machine used to measure the alcohol in the breath and therefore the alcohol in the bloodstream. Rule 73-2 of the Rule and Regulations of SLED approved various models of breath testing devices manufactured by Stephenson Corporation, Red Bank, New Jersey. Stephenson Corporation was acquired by Smith and Wesson in 1971, who continued to manufacture the same machine under the Smith and Wesson trademark. Machines bought since that time are Smith and Wesson, and the machine in question is Graves, Id., was such a machine.

The problem facing law enforcement officers was that in some trials, especially before magistrates or city recorders, the courts had decided that under the law, these two machines which

STATE DOCUMENTS

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were identical except in brand-name, were not the same under the statute, and therefore, had excluded from the trial testimony the results of the breathalyzer. On appeal, at least one circuit court judge agreed with the position because of the general rule in criminal cases which strictly construes all criminal statutes in favor of the defendant.

In Graves, supra, the Supreme Court took advantage of an exception which was dismissed in order to give direction to the State courts. In an opinion concurred by all justices, the court said:

The circuit court properly dismissed respondent's technical exception to breathalyzer evidence. Specifically, respondent contended that unauthorized equipment was used to establish his blood alcohol content as .19%, considerably above the figure of .10% which supports a statutory presumption of intoxication. Section 56-5-2930, 1976 Code of Laws, as amended. Breathalyzer equipment must be approved for use by the South Carolina Law Enforcement Division (SLED) under Section 56-5-2950(a), 1976 Code of Laws, as amended and Rule 73-2, Rules and Regulations of SLED. Pursuant to these requirements, SLED approved various models of breath testing devices manufactured by Stephenson Corporation, Red Bank, New Jersey. The breathalyzer employed in this case was manufactured by Smith and Wesson, but the testimony reveals that Stephenson Corporation was acquired by Smith and Wesson in 1971. Thus the machine was the same machine previously approved; it simply bore a different name. To have suppressed the probative evidence of the breathalyzer test on the basis advanced by respondent would have been technical in the extreme. The City Recorder ruled properly and was correctly sustained by the circuit court. State v. Graves, Opinion No. 21892, Filed March 31, 1983.

It is now clear that the Smith and Wesson machines can be used and the results of these tests admitted into evidence in South Carolina.

The second part of this case deals with what is proper argument in a criminal case. In Graves, supra, the prosecutor argued to the jury that the defendant received special treatment because he was a legislator and a Highway Patrolman had been called to take him home. The Court in a 4-1 decision reiterated its position that a prosecutor must avoid appealing to a juror's personal bias or arousing his passion or prejudice. In addition, the Court found that evidence supporting the prejudicial argument was improperly admitted in the testimony of the case. Graves, Id.

The question of how far a prosecutor can go in vigorously prosecuting a criminal case goes to the basic idea of the duty of the State to deal fairly with all citizens, even defendants. Issues at trial should be decided on the evidence of the case or lack thereof, and not on the personal feelings of the jurors, the court, the prosecutor, or police officers. It is therefore improper to attempt to introduce any evidence solely to prejudice the jury. Irrelevant and prejudicial evidence that is introduced can lead to a reversal or appeal.

Since Highway Patrolmen and Police Officers often act as prosecutors for their own cases, they are subject to the same restrictions as Attorney prosecutors and therefore, must avoid prejudicial evidence and argument to the jury. To do otherwise risks the overturning of a conviction and the uncertainty and trouble of a new trial.

—Brief Prepared by
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LEGAL LOG will devote its columns to law enforcement's legal problems. An attempt will be made to offer practical guidelines to law enforcement officers rather than abstract legal theories.

LEGAL LOG is published monthly by the South Carolina Criminal Justice Academy of which John A. O'Leary is executive director. The academy's legal affairs and legal instruction are handled by James M. Kirby, senior staff counsel, Henry R. Wengrow, general counsel and Joseph H. Lumpkin, Jr., staff counsel.